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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,867	03/29/2004	Mark G. Hayden	47315.0038	2866

25928	7590	07/27/2006

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EXAMINER
DARNO, PATRICK A

ART UNIT	PAPER NUMBER
2163	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _15 March 2005_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _18-38_ is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _18-38_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on _29 March 2004_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All b) ☐ Some * c) ☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _07222006_.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-17 have been cancelled. Claims 18-38 have been added.

Claims 18-38 are pending in this office action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection
is appropriate where the conflicting claims are not identical, but at least one examined application
claim is not patentably distinct from the reference claim(s) because the examined application
claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g.,
In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re
Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ
619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be
used to overcome an actual or provisional rejection based on a nonstatutory double patenting
ground provided the conflicting application or patent either is shown to be commonly owned with
this application, or claims an invention made as a result of activities undertaken within the scope
of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.   Claims 18-38 are rejected on the grounds of nonstatutory obviousness-

type double patenting as being unpatentable over claims 1-17 of U.S. Patent No.

6,732,171 issued to Mark G. Hayden in view of U.S. Patent Number 6,260,145

issued to Masahiro Komura et al. (hereinafter "Komura").

The independent claim from Patent Number 6,732,171 and the

independent claim from Application Number 10/708,867 are shown below.

Patent Number 6,732,171	Application Number 10/708,867
A system for use in achieving distributed data storage over a computer network comprising	A system for use in achieving distributed data storage over a computer network comprising:
a storage server system comprising one or more storage servers that each comprise a data storage device and a network interface for communicating with an application client that will require data storage and a management storage server; and	a storage server system comprising one or more storage servers that each comprise a data storage device and a network interface for communicating with **one or more** application client**s** that will require data storage and **at least one** management storage server; and
a management storage server system comprising one or more management storage servers that each comprise a network interface for communicating with an application client <u>that will require data storage</u> and each of said one or more storage servers;	a management server system comprising one or more management storage servers that each comprise a network interface for communicating with an application client and each of said storage servers;
<u>wherein each of said management storage servers comprises</u> a data storage configuration identifier whose value is indicative of an allocation of data storage within said storage server system at a point in time;	**each of said management servers and each of said data storage servers comprising** a data storage configuration identifier whose value is indicative of an allocation of data storage within said storage server at a point in time,
<u>wherein an</u> allocation of data storage within said storage server system <u>comprises defining</u> one or more virtual	**the** allocation of data storage within said storage server system **comprising** one or more virtual

volumes of data storage distributed over one or more of said storage servers;	volumes of data storage distributed over one or more of said storage servers;
wherein each of said management storage servers is capable of providing a first value for said data storage configuration identifier to an application client;	wherein each of said management servers is capable of providing a first value for said data storage configuration identifier to an application client **and each of the storage servers**,
<u>wherein</u> each of said management storage servers is capable of providing a second value for said data storage configuration identifier to each of said storage servers after there is a change in the allocation of data storage within said storage server system;	and each of said management storage servers is capable of **asynchronously** providing a second value for said data storage configuration identifier **the application client and** to each of said storage servers after there is a change in the allocation of data storage within said storage server system;
wherein each of said storage servers <u>comprises a comparator</u> capable of: (a) comparing <u>said first value for</u> said data storage configuration identifier which is associated with a data storage related request received from an application client with said second value for said data storage configuration, and (b) <u>ignoring said data storage related request if said first value is not equal to said second value.</u>	wherein each of said storage servers is capable of: (a) comparing a value for said data storage configuration identifier which is associated with a data storage related request received from an application client with said second value for said data storage configuration, and (b) **when the values are not equal, providing an indication to a management storage server that the values are not equal.**

It is clear to see that only minor, obvious differences occur between the independent claims of Patent Number 6,732,171 and Application Number 10/708,867. The Examiner asserts that the two claims above actually represent the same invention.

Specifically, the independent claim of Patent Number 6,732,171 discloses all the elements of the independent claim of Application Number 10/708,867 except for the following limitation: "when the values are not equal, providing an indication to a management storage server that the values are not equal."

However, Komura discloses when values are not equal, providing an indication to a management storage server that the values are not equal (Komura: column 13, lines 7-10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hayden with the teachings of Komura noted above. The skilled artisan would have been motivated to improve the teachings of Hayden per the above such that illegal transactions can be prevented (Komura: column 2, lines 33-38).

Claims 19-38 of Application Number 10/708,867 are also rejected as containing obvious variations of the subject matter in claims 2-17 of Patent Number 6,732,171.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick A. Darno whose telephone number is (571) 272-0788. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:30 pm.
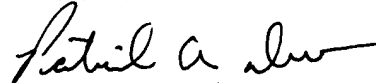
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patrick A. Darno
Examiner
Art Unit 2163

PD

ALFORD KINDRED
PRIMARY EXAMINER